Supreme Court, U.S.
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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1995

RICHARD D. JENKINS,
Petitioner

v.

NATIONAL LABOR RELATIONS BOARD,
Respondent

On Petition For Writ Of Certiorari to the
United States Court of Appeals
for the Second Circuit

PETITION FOR WRIT OF CERTIORARI

RICHARD D. JENKINS
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35pp

QUESTION PRESENTED

In direct conflict with decisions of other U.S. Courts of Appeals, the Supreme Court and the U.S. Constitution, was the decision of the Second Circuit to grant summary denial of petitioner's petition for review, on the Board's motion, a violation of petitioner's constitutional right to due process of law under the fourteenth amendment, abridged?

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Rule 29.6 Wholly-Owned Subsidiaries:

Vermont Transit Bus Lines
Texas - New Mexico Bus Lines
and probably others

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Petitioner, Richard D. Jenkins, respectfully prays that a writ of ceriorari issue to review the judgement and opinion of the United States Court of Appeals for the Second Circuit in this case. The issue is whether the Court had jurisdiction to hear my case and whether my rights to "due process of law" have been abridged in the process. The National Labor Relations Board ("Board") has taken the position that my case was different than the one before the Court. The Court has accepted the Board's position without scrutinizing the Board's claim nor requiring the Board to follow Rule 16 of the Federal Rules of Appellate Procedure by providing the Court with the "record on review" which evidences the order sought to be reviewed, the findings on which it is based, and the pleadings, evidence and proceedings to review the Board's order. The Board does not wish to have the aforementioned information disclosed due to the unethical way in which the Board conducted its investigation and decision making process.

OPINION BELOW

The Order of the National Labor Relations Board, "Order Denying Motion For Reconsideration", June 9, 1995 is reprinted in Appendix "C".

The Order of the U.S. Court of Appeals, Second Circuit, granting the NLRB "summary denial of my petition for review", July 3, 1995, is referenced in Appendix "D".

The Order of the U.S. Court of Appeals, Second Circuit, "denying my motion for reconsideration", September 18, 1995, is also referenced in Appendix "D".

JURISDICTION

The opinion of the court of appeals was entered on September 18, 1995. The jurisdiction of this court is invoked under 28 U.S.C. Section 1254(1).

STATUTORY PROVISIONS INVOLVED

Section 7 of the National Labor Relations Act, 29 U.S.C. Section 157 which provides as follows:

> Employees shall have the right to self-organize, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing...

Labor-Management Reporting and Disclosure Act of 1959, As Amended, (29 U.S.C. 411) Bill of Rights, Section 101, (a)(1) Equal Rights.

> Every member of a labor organization have equal rights and privileges within such organization to nominate candidates, to vote in elections or referendums of the labor organization, to attend membership meetings and to participate in the deliberations and voting upon the business of such meetings, subject to reasonable rules and regulations in such organization's constitution and bylaws.

The Constitution of the United States of America: Article I,

> All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

"Article II,

> The executive Power shall be vested in a President of the United States of America.

Sec. 2 [2]:

> He shall have the power...to appoint Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

Article III,

> The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish.

The point being that the Constitution guarantees U.S. citizens a separation of government powers, a sort of check and balance.

Amendment XIV to the U.S. Constitution, Section 1 states in part,

> No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law.

STATEMENT OF THE CASE

The present case originated as a result of the Greyhound strike, which commenced on March 2, 1990, and my personal legal involvement began in April of 1993 when the tentative Settlement Agreement ("S.A.") was announced. I have been contesting the process by which it was negotiated and ratified from day one of its inception. On may 7, 1993, I filed charges with the NLRB against the Amalgamated Transit Union ("ATU") under section 7 of the Act as the ATU's International President negotiated the "S.A." in lieu of our exclusive chosen representitives and then the ATU excluded eight-thousand (8,000) out of nine-thousand (9,000) bargaining unit employees from voting on the agreement. (Pertinent language of the charges is reprinted in Appendix "A".)

The Board has yet to do anything about the charges I filed as they have been pending before the Board for two years and seven months. Some two-hundred other bargaining unit employees have filed similar charges and their cases are also pending. I requested injunctive relief under section 10 (j) of the Act on May 12, 1993 and never received a response from the Board. On July 8, 1993, I wrote more than forty (40) objections to the "S.A." and mailed them to the Administrative Law Judge (ALJ) who was supposedly going to objectively consider some two-hundred other member's objections, also. Greyhound, the ATU and Counsel for General Counsel were supposed to answer our objections in a timely manner, which none of them did. On August 8, 1994, I wrote a letter to the ALJ calling time-limits on Greyhound's, the ATU's and Counsel for General Counsel's written responses. The

ALJ did not respond to our written objections.

On August 16, 1994, I attended a hearing in Milwaukee, WI, at Region 30 of the NLRB as did other ATU members of which I and three others testified. I testified first, but just before I was called, the ALJ called for a recess and directed the attorney's for Greyhound, the ATU, and the Board to step out into the hall for a discussion, obviously something he didn't want to share with the membership who comprised the remaining individuals in the hearing room. When the hearing resumed, I contested Greyhound's, the ATU's and Board's late answers to our written objections to the "S.A." My position was, and still is, that only our objections and not their responses should be considered. Greyhound and the ATU had filed a joint answer and the Board's was separate, however, it baffles me that out of all of those objections, not even one was found to have any merit and the ALJ did not consider any of our objections in his written decision, but only looked for invalid reasons for rejecting them./1

My testimony continued, contesting the legality of negotiations and ratification of the "S.A." With regard to Representation in contract negotiations, I cited sections 23 and 24 of the International's Constitution and General Laws which explicitely defines the duties of the "Joint Council" as the exclusive bargaining agent of the affiliated local unions and "Representation" which clearly defined our chosen Joint Council

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1/ A copy of the ALJ's decision is not contained herein as it is very lengthy.

representatives as,

> the member's exclusive representative for the purpose of collective bargaining as to wages, hours, working conditions, pensions, union security, and check-off, and other conditions of employment and for negotiation and execution of contracts with employers pertaining such matters.

(see Appendix "E" for a a partial reproduction of both sections). I also discussed the discriminating practice the International instituted in allowing only a handful of the members of the bargaining unit to vote by misquoting section 19.9 of the International's Constitution and General Laws. In a letter to the membership dated May 10, 1993, the International President ("IP") cited unethical and illegal reasons why he disqualified so many members from the ratification process. The last five lines of page one of his letter states,

> Those who had taken a withdrawl card and transferred to another local union representing another employer or to member-at-large or who had otherwise secured permanent employment elsewhere (Section 19.9) were never deemed eligible to receive a ratification ballot.

(see Appendix "F" for a full reproduction of the letter) Section 19.9 has to do with our "Defense Fund" which provides strike benefits, not voting rights. Here's section 19.9: Other Permanent Employment.

> Should any member of a L.U. (local union), while on strike or lockout, secure permanent

> employment and remain at the same over seven (7) days, such member shall not be entitled to strike or lockout benefits and shall not be restored to the payroll without approval of the G.E.B. (General Executive Board).

On page two of that letter he contradicts himself by allowing members-at-large to vote even though he stated on page one that they weren't deemed eligible and our Constitution specifically prohibits it in section 21.14, Others Leaving Active Service, where it states,

> As M.A.L.s, they will have no voice or vote on any matters affecting the L.U. or I.U. (International Union) including election of officers and labor contract or pension matters.

Section 20.3 of our Constitution and General Laws insures our right to vote on company propositions through a "Referendum Vote. (see Appendix "F" for a reprint)

The next member to speak was Kenneth Benner who described the "S.A." as a discrace to labor, among other things and the RICO suit/2 (Racketeer Influenced Corrupt Organization Lawsuit) that Greyhound filed against the union as "Blackmail".

2/ The RICO suit Greyhound filed against the union had no basis of fact, however, it brought the ATU to its knees with legal expenses and was used by Greyhound as a bargaining chip to contract negotiations. (eg. if the S.A. got approved, Greyhound would drop the RICO suit).

Howard Brown, Jr. contested Greyhound's refusal, as well as the ATU and Board's refusal, to allow him to be present, testify and examine witnesses at his arbitration, dismissal hearing. His appeal was denied.

Ralph Schlieve testified that he and others, who retired during the strike, should be permitted to return to work, as prior to the strike a retiree was permitted to return if he/she repaid retirement benefits received, back into the trust. His appeal was denied.

The following month, the ALJ rendered his decision and approved the S.A. He used a rubric of four (4) factors cited in Independent Stave Company, Inc., 287 NLRB No. 76 (1987) as a guideline in determining whether the S.A. was acceptable. (see Appendix "B". Number three (3) was of most concern to me as it states, "whether there has been fraud, coercion, or duress by any of the parties in reaching the settlement:" Fraud and coercion abounded throughout negotiations and ratification of the S.A. I produced ample material evidence throughout the prodceedings to support my position (eg. my initial charges against the union accompanied with a sworn affidavit, my written objections to the S.A., verbally before the ALJ at the hearing in Milwaukee, WI, throughout my written appeal [29 single spaced pages to the Board], in briefs and reply briefs to the Board in response to the ATU's, Greyhound's and the Counsel for General Counsel's objections, and in briefs before the U.S. Court of Appeals).

Due to the voluminous quantities of materials just referenced, petitioner will not be able to produce each item referenced for to do so would take a great deal of time to reprint the materials in a bookelt of size the Court requires. I shall, upon request, produce any reference cited if the Court

wishes, but please allow for ample time to reproduce it.

REASONS FOR GRANTING THIS PETITION

I. THE U.S. COURT OF APPEALS, SECOND CIRCUIT, HAS ADOPTED CONFLICTING STANDARDS WHICH ARE NOT IN CONFORMANCE WITH OTHER LOWER COURTS, THIS COURT OR EVEN WITH ITS OWN PREVIOUS DECISIONS.

SUMMARY JUDGEMENT

When a dispute of material fact exists, a court should not grant a motion for summary judgement.

> Affidavits made on personal knowledge are probative on a motion for summary judgement to demonstrate the existence or absence of a dispute issue of material fact.

See Schneider v. OG & C Corp., 684 F. Supp. 1269, 1274 (S.D.N.Y. 1988)

In Herman v. Provident Mutual Life Ins. Co, 886 F.2d 529, 536 (2d Cir. 1989) the court improperly granted summary judgement on genuine factual issues presented by contradictory affidavits and deposition testimony, (cert. denied 493 U.S. 1076, 1990)

In Jaroslawicz v. Seedman, 528 F.2d 727, 731 (2d Cir, 1975)

> The responsibility of the district judge on a motion for summary judgement is merely to determine whether there are issues to be tried, rather than to try the issues himself via affidavits. (see also,

In the present case, the U.S. Court of Appeals granted the Board a motion for summary denial of my petition for review. The material facts presented in the case called for a trial.

FAIR REPRESENTATION

Section 7 of the NLRA gives the union member the right to have a representative of his or her own choosing negotiate the terms of a contract. An International President interfering with local union representatives, actually taking charge in our case, has the effect of "inhibiting the process of discussion thus casting a mind against reaching asgreement" (see NLRB v. Katz, 369 U.S. 736, 747, 8L.Ed 2d 230, 82 S.ct. 1107 (1962) In our case, it has prevented us from reaching an agreement acceptable to the membership.

In NLRB v. United Paper Workers International Union, 965 F.2d 1401; 1992 U.S. App. LEXIS 12601; 140 L.R.R.M. 2788, the U.S. Court of Appeals for the Sixth Circuit decided that intervention of the International President was an effort on his part to expand the bargaining power beyond the appropriate bargaining unit.

UNION'S CONSTITUTION AND BY-LAWS CONSTUTES A CONTRACT.

The unions Constitution and by-laws defines a relationship between a parent union and its members. It is customary for an International organization to require that members conform to the conditions and terms of the Constitution, however, just as the U.S. Constitution provides guidelines with which citizens and government live and work together,

so does the Union's Constitution and has been defined in the case NLRB V. Allis-Chalmers Mfg. Co.; 388 U.S. 175, 192, 18L. Ed. 2d 1123, 87 S. ct 2001 (1967) and Local 248 UAW v. Natzke, 36 Wis. 2d 237, 153 N.W. 2d 602, 608 (Wis. 1967), as a "contract" between the labor union and its members. My understanding of a contract is that both parties must abide by its provisions. In the present case, our International President has placed himself above our union's Constitution and has repeatedly violated its provisions by depriving us of the right to fair representation and our right to control our destiny through collective bargaining and the right to vote.

EQUAL VOTING RIGHTS

The L.M.R.D.A., Section 101(a)(1) insures a union member that he/she will be treated the same as any other member of the union when it comes to voting for representatives for union office, contracts and other issues involving union affairs.

When a union's Constitution requires that a contract be ratified, such as ours does, then a ratification vote must be taken. (see Merk v. Jewell Food Stores, 138 L.R.R.M. 2433, U.S. ct. of app. (7th cir., 1991) When voting takes place, all members must be treated equally as required by sec. 101(a)(1) of the L.M.R.D.A.

This was not the case for us as the rules in our Constitution were not equally and equitably applied. Ninety percent of the members of the bargaining unit were unjustly denied their right to vote. (see John E. Parks Jr., et al v. International Brotherhood of Electrical Workers, 203 F. Supp. 288; 49 L.R.R.M. 2911; 49 L.R.R.M. 3157; 44 Lab. Cas. (CCH) P17, 546; 44 Lab. Cas. (CCH) P17, 571

whereby it is the opininon that when a particular sanction is clearly permitted by the Constitution of a Union, the courts should be slow in substituting their judgement, however, if a particular sanction is clearly unreasonable under all circumstances and unjust to individual members of the offending union, the courts should not hesitate to exercise whatever jurisdiction they may have to correct the injustice.

DUE PROCESS OF LAW

The fourteenth amendment to the U.S. Constitution guarantees every citizen the right to due process of law. However, I and my fellow union members have been experiencing grave difficulty in achieving this goal. With regard to Greyhound, the ATU, the NLRB and more recently the U.S. Court of Appeals, Second Circuit, I don't feel that any of them think that it exists, as all of their efforts have been to circumvent it.

In Ford v. Wainwright, 477 U.S. 399; 106 S. ct. 2595; 1986 U.S. Lexis 64; 91 L. Ed 2d 335; 54 U.S.L.W. 4799 an individual's right to due process of law does exist. Justice O' Conner state in his opinion,

> if there is one 'fundamental requisite' of due process, it is that and individual is entltled to an opportunity to be heard.

Grannis v. Ordean, 234 U.S. 385, 394 (1914)

The Supreme Court defined due process as, "a flexible concept, requiring only such procedural protection as the particular situation demands." (see Mathews v. Eldridge, 424 U.S. 319, 334 (1976); and Morrissey v. Brewer, 408 U.S. 471, 481 (1972). Well, the ATU membership hasn't even been shown this much consideration.

BEST AVA

The NLRB has thwarted every effort I've made to contest the S.A. In an opinion made by a justice of the Supreme Court, almost sixty years ago, Justice Pitney defines the problem and presents the solution for which I'm grateful. (see St. Joseph Stockyards Co. v. United States ET AL., No 497, Supreme Court of the United States, 298 U.S. 38; 56 S. ct. 720; 1936 U.S. LEXIS 973; 802 Ed. 1033. Justice Pitney so states:

> Legislative declaration or finding is necessarily subject to independent judicial review upon the facts and the law by courts of competent jurisdiction to the end that the constitution as the Supreme law of the land may be maintained. Nor can the legislature excape the constitutional limitation by authorizing its agent to make findings that the agent has kept with that limitation. Legislative agencies, with varying qualifications, work in a field peculiarly exposed to political demands. Some may be expert and impartial, others subservient. It is not difficult for them to observe the requirements of law in giving a hearing and receiving evidence. But to say that their findings of fact may be conclusive where constitutional rights of liberty and property are involved, although the evidence clearly establishes that the findings are wrong and constitutional rights have been invaded, is to place those rights at the mercy of administrative officials and seriously to impair the security inherent in our judicial safegards. Under our system there is no warrant for the view that the judicial power of a competent court can be circumscribed by any legislative arrangement designed to give effect to administrative action going beyond the limits of

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constitutional authority

The constitutional safeguard of judicial review is no more apparently needed than in the present case before this court. Certain factors have preeminently prevented me and others from enjoying due process of law and successfully contesting the illegal settlement agreement.

II. THE BOARD IS PROTECTING THE SETTLEMENT AGREEMENT FROM JUDICIAL REVIEW

The Board has instituted internal procedures which have prevented any of the charges against the S.A. from being entertained. If the Board does not file complaint upon a charge that someone submits, the charge gets dismissed without judicial review. Such has been the case with all of the charges ATU members have filed against Greyhound and the Union with regard to the S.A. The Board has claimed that the charges I filed against the Union were not the same as the charges that were before the U.S. Court of Appeals. Assistant General Counsel argued that my case was against the Union and that the case before the Court was against Greyhound. Actually, the case against the Union is the same as the case against Greyhound as it is the same S.A. which both parties share in common. To imply one without the other is not possible as a contract is a shared agreement. To imply that one does not exist would indicate

that there is no S.A. as the Union cannot be engaged in a contract alone.

In Abdelmesih v. Waldorf-Astoria, 93 Civ. 4921 (CSH), United States District Court for the Southern District of New York, 1995, U.S. Dist. LEXIS 6407, 149 L.R.R.M. 2937, U.S.D.J. Charles nHaight, Jr. states,

> The law is clear that regardless of who is named as defendant, a hybrid claim is presented if an employee has a cause of action against both the employer and the union, where the two claims are inextricably linked, and where the case to be proved is the same against both.

(see McKee v. Transco Products, Inc., 874 F.2d 83, 86 (2d Cir. 1989)

Such allegations in my affidavit, appeal to the Board and appeal to the U.S. Court of Appeals illustrate the hybrid status of my case.

Another similar case that supports my position is Brandon v. Holt, 469 U.S. 464, 105 S. ct. 873, 83 L. Ed. 2d 878 (1985) in which plaintiff filed a civil rights action against a police officer who assaulted them, and the city's director of police in his official capacity, who the district court found liable in his officer's capacity. On appeal, the Court of Appeals ruled that the director was entltled to good-faith immunity, rejecting plaintiff's argument that the claim against him was essentially one against the city, and reversed.

The Supreme Court granted Certiorari and reversed the Court of Appeals due to the technicality that the claim against the director in his official capacity was in effect, seeking damages from the city. The claim against the director was the same claim due to the same issues, against the city, the same as my claim with regard to the S.A. against the union would be the same claim against the company, because if sucessful, both parties would need to negotiate a new S.A. The Court held, therefore, that the plaintiff, even at that late stage, would be entitled to amend their complaint to conform to the proof and the District Court's findings, and the Court would treat the complaint as having been so amended.

CONFLICT OF INTEREST

The NLRB is involved in a conflict of interest due to the fact that Greyhound's leading attorney, Rosemary Collyer, served as General Counsel of the National Labor Relations Board for four and one-half years just prior to Greyhound's contract negotiations, that is from October of 1985 until April of 1989. Sometime between April of 1989 and November of 1989, Greyhound hired her to run contract negotiations. My experience with the General Counsel for the past two and one-half years have been as though I've been dealing directly with Greyhound. I'm sure that the Court would agree that most attorney's would disqualify themselves

under such circumstances, however, Greyhound planned it that way and she is just the right ticket for what they want. One would have to be totally ignorant not to notice what's going on here. Under the present circumstances the union member doesn't have any hope of successfully contesting this gross injustice. The General Counsel has tied-up all of our charges and none will be contested before any court because the Board will let them sit in their computer and deem them pending, forever.

CONCLUSION

I've presented the facts and supporting evidence as best I am able. This court is our only hope of justice and an inroad to protection of our constitutional rights. On behalf of myself and the entire group of ATU members who have suffered this grave injustice, we pray that this Court grants this petition for writ of certiorari.

Respectfully submitted,

Richard D. Jenkins

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APPENDIX A

NATIONAL LABOR RELATION BOARD

CHARGE ASGAINST LABOR ORGANIZASTION

case 34-CB-1686

Date filed: May 7, 1993

LABOR ORGANIZATION OR ITS AGENTS AGAINST WHICH CHARGE IS BROUGHT

James LaSalla, President
AMALGAMATEED TRANSIT UNION

Statement of the facts: Since on or about April 20, 1993, the above named labor organization, by its officers, agents and representatives has brteached its duty of fair representation to employees of Greyhound Lines, Inc. by:

1. the president of the International Union negotiating a collective bargaining agreement without proper authority; and

2. excluding unit employees who are memberrs in good standing of the FUnion from voting on the contract.

By these and other acts, the above named labor organization has restrained and coerced the employees of Greyhound Lines, Inc. in the exercise of the rights guaranteed in Section 7 of the Act.

APPENDIX B

Independent Stave Company, Inc. and James A Holt and Charles William Moore and James O. Railey, Jr. and James Edward Turner. Cases 9-CA-19619-1, 9-CA-19619-2, 9-CA-19619-3, and 9-CA-19619-4

16 December 1987

DECISION AND ORDER

By Chairman Dotson and Members Johansen, Babson, Stephens, and Cracraft

Four rules the ALJ considered in his decision to accept the Settlement Agreement:

1) whether the charging party(ies), the respondent(s), and any of the individual discriminatee(s) have agreed to be bound, and thje position taken by the General Council regarding the settlement; 2) whether the settlement is reasonable in light of the nature of the violations alleged, the risks inherent in litigation, and the stage of the litigation; 3) whether there has been any fraud, coercion, or duress by any of the parties in reaching the settlement; and (4) whether the respondent has engaged in a history of violations of the Act or has breached previous settlement agreements resolving unfair labor practice disputes.

APPENDIX C

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

Greyhound Lines, Inc.

and Cases 30=CA10681-2
30-CA-10960, et al

Amalgamated Council of
Greyhound Local Unions
affiliated with Anmalgamated
Transit Union, AFL-CIO, CLC

ORDER DENYING MOTIONS FOR RECONSIDERATION

On September 22, 1994, ALJ Robert Gianasi issued a Decision in this case in which he recommended, inter alia, that the Board approve the partial settlement agreement and that the relevant complaint allegations covered by the settlement agreement be dismissed. On January 18, 1995, the General Counsel, the Respondent, and the Charging Pasrty (ATU) filed a Joint Motion to Sever Review of the Pasrtial Settlement and review of unfair labor practice findings/1 and joint motion for oral presentation on settlement. On february 24, 1995 the NLRB issued an order granting the parties joint motion to sever and approving the partial settlement agreement.

1/ The judge found that the Respondent violated Sec. 8(a)(5),(3). amd (1) of the Act by insisting on its experienced based senioritu (EBS) proposal during bargaining and by later implementing that proposal. Review of the judges findings of these violations is currently pending before the Board and those findings are not at issue here.

APPENDIX C --continued

On Feb. 27, 1995, Richard D. Jenkins, an individual, filed an Appeal to the ALJ's decision, with attachments. On March 27, 1995, Kenneth Benner, an individual, filed an Appeal to the ALJ's opinion, with atachments, and on April 6, 1995, he filed an amendment to his appeal, with atachments(we deny the General Counsel's request that the Board reject the attachments included with Jenkins' and Benners' appeals) Therearfter, the respondent and the charging party filed a joint brief in response to these appeals and the general counsel also filed a response. Finally, Jenkins and Benner filed replies to these responses. (In his reply brief filed May 2, 1995, Jenkins belatedly moved to intervene in this case. We deny that motion as untimely.) Because Jenkins and Benner filed their appeals to the judges decision after we issued our order approving the partial settlement agreement, we will treat their appeals as timely filed motions for reconsideration of our order. The NLRB has delegated its authority in this proceeding to a three-member panel. The issues presented here are whether Jenkins and Benner have standing to file motions for reconsideration in this case and if so, whether the arguments set out in their motions raise issues that would warrant reconsideration of our February 24, 1995 order. For the reasons set out below, we find Jenkins and Benner lack standing to participate in this case and are not entitled to file motions for reconsideration. Morever, assuming arguendo that they did have standing, we would find that they have failed to present any evidence that might warrant reconsideration of our order.

As to the first issue, whether Jenkins and Benner have standing, Section 102.48(d)(1) of the Board's Rules & Regulations specifically provides that a party to a proceeding before the Board may move for reconsideration after the board has issued its decision or order (Section 102.48(d)(1)states, in relevant part:
(a)party to a proceding before the Board may, because of extraordinary circumstances, move for reconsideration, rehearing, or reopening or the record after the Board decision or order. A motion for reconsideration shall state with particulatity the material error claimed and with respect to any finding of material fact shall specify the page of the record relied on.) Neither Jenkins or Benner separately filed charges in this proceding and neither timely sought to intervene. The General Counsel and the charging party represented their interests in this case. Accordingly, neither is a party to this proceding. Thus, for the reasons set out in the Board's decision in Lincoln technical institute, we find that neither Jenkins nor Benner, as nonparties in this proceding, has standing to file a motion for reconsideration. We also find that Jenkins and Benner submission of written objections to the judge and their testimony before him do not somehow change their status to parties in this proceeding or otherwise entitle them to participate in the case beyond the limited extent prescribed by the judge. In this regard as the judge explained in his decision, under the Board's decision in Independent Stave, 287 NLRB 740 (1987), the Board

considers a number of factors in deciding whether to approve a non-Board settlement agreement. One of these factors is whether the charging party(ies) the respondent(s) and any of the individual discriminatee(s) have agreed to be bound, and the position taken by the General Counsel regarding the settlement (Independent Stave 287 NLRB at 743.) Although neither Jenkins nor Benner is a charging party or a discriminatee, the judge granted them the limited right, along with other employees arguably affected be the partial settlement, to file objections to the partial settlement. For under settlement, to file objections to the partial settlement. For under the terms of the judges May 27, 1994 order approving procedures for aspproval of partial settlement agreement, the over 5,000 Greyhond employees affected by the partial settlement agreement received notices outlining the terms proposed settlement and were notified that they could submit objections to the partial settlement agreement to the judge in writing and that those objections would be considered at a hearing. As the judge himself stated such an offer was unprecedented. Approximately 300 individuals submitted written objections to the judge and four individuals testified before him at a special hearing to consider the settlement asgreement held an August 16, 1994. Jenkins and Benner were among those who filed written objections and testified at the August 16 hearing. As the judge explained to the witnesses at the Ausust 16 hearing, "normally employees, particularly employees in such great numbers as are

involved in this case, do not get the opportunity to speak to a settlement so I think that this is unusual and is a good procedure but there are no ground rules. I just want to hear from you". Although the judge did, indeed, consider all the objections to the partial settlement, including Jenkins and Benner's, in deciding whether to recommend aspproval of the partial settlement, he did not contemplate nor do we find now that his "unprecedented"offer to the over 5,000 affected employees somehow entitled them to participate further in the case or somehow become parties to it. For this reason also, we find that Jenkins and Benner do not have standing to file "Appeals' to the judges decision, which we have considered here as motions for reconsideration. However assuming that Jenkins and Benner did have standing to participate in this case, we would find that that they have failed to present any evidence that would warrant reconsideration of our February 24, 1995 order because they have merely repeated arguments previously made to the judge. In this regard, Jenkins contends, as he did in his written objections and in his August 16, 1994 testimony before the judge, that the partial settlement agreement, the new collective-bargaining agreement between the pasrties. Specifically, Jenkins contends that there were irregularities in the negotiation and ratification of the parties' new collective -bargaining agreement. Jenkins aslso contends, as does Benner, that the terms of the agreement are too favorable to Greyhounmd. The judge considered and

rejected these arguments in reaching his conclusion that Board should approve the partial settlement agreement. Specifically, the judge found that the ratification procedure was an internal union matter and that the substance of the collective-bargaining agreement was as matter for negotiation by the parties and was not subject to review by the Board. We agreed with the judge's analysis of these issues and therefore adopted his recommendation to approve the partial settlement agreement. Since these motions present no new grounds as to why we should reconsider our order we would find these motions lacking merit if they were properly before us.

The Board having duly consideed the matter,
It is ordered that these motions for reconsideration are deniedl;

Dated, Washington, D.C , June 9, 19951

James M. Stephens, Member
Charles I. Cohen, Member
John C. Truesdale, Member

F

APPENDIX --D

UNITED STATES COURT OF ASPPEALS
FOR THE SECOND CIRCUIT

DOCKET No. 95-4095

NOTICE OF MOTION
FOR
SUMMARY DENIAL OF PETITION
FOR REVIEW

MOTION BY:

John D. Burgoyne
NLRB
1099 14th Street, N.W.
Washington, D.C. 20570
(202)273-2965

OPPOSING COUNSEL:

Richard D. Jenkins
330 N. Canterbury Rd.
Canterbury, Ct 06331
(860) 546-9194

Brief statement of the relief sought:

Summary denial of petition for review of Board orders filed by petitioner Richard D. Jenkins

Before: Hon. Roger J. Miner, Hon. John M. Walker, Jr., & Hon. Fred I. Parker, CJJ

It is hereby ordered that the motion be and it hereby is granted

UNITED STATES COURT OF APPEALS, SECOND CIRCUIT
filed Aug 8 1995
George Lange III, Clerk

APPENDIX--D--continued

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
dc 30-CA-10681-2

At a stated Term of the United States Court of Appeals for the Second Circuit, held ast the United States Courthouse, Foley Square, in the City of New York, on the 18th day of September one thousand nine hundred and ninety five.

Present:
Hon. Roger J. Miner,
Hon. John M. WAlker, Jr.
Hon. Fred I. Parker
Circuit Judges

Richard D. Jenkins
Petitioner,

v.

National Labor Relations Board, Respondent,
Amalgamated Council of Greyhound Local Unions, and Greyhound Lines, Inc.
Intervenors

Docket No. 95-4095

A motion for reconsideration having been filed herein by petioner Richard D. Jenkins, Upon consideration thereof,it is ordered that said motion be and it hereby is DENIED.

For the Court
George Lange III, Clerk

United States Court of Appeals, Second Circuit, filed September 18, 1995

APPENDIX --E

CONSTITUTION AND GENERAL LAWS
AMALGAMATED TRANSIT UNION

Section 23 JOINT COUNCILS: Where members of the A.T.U. belong to different L.U.'s and are employed by the same company, such L.U. shall form Joint Councils for bargaining purposes and for the purpose of taking strike action. In appropriate cases, as decided by the I.P. and under such asrrangenments as the I.P. shall determine, such J.C.'s may include labor organizations other than A.T.U. affiliated with such J.C.'s. The Joint Council shall be the exclusive bargaining agent through which the L.U.'s which form said Joint Council must bargain. The Council shall negotyiate a single contract which will cover the membership employed on the property of all the L.U.'s which are members of the Joint Council. There shall be no separate counting of the votes by L.U.'s.

Section 24 REPRESENTATION: The I.U. and the L.U. in which a member holds membership (or where the L.U. in which a member holds membership is affiliated with a Joint Council) shall be the member's exclusive representative for the purpose of collective bargaining as to wages, hours, working conditions, pensions, union security, and check-off, and other conditions of employment and for the negotiation and execution of contracts with employers, pertaining to such matters.